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August 29, 1983

Major Mason S. Butterfield
Chief of Law Enforcement
N.H. Fish and Game Department
34 Bridge Street
Concord, New Hampshire 03301

Re: Resident and Nonresident Commercial Fishing Licenses

Dear Major Butterfield:

By memorandum dated July 20, 1983, you made a request of this Office for an interpretation of H.B. 254, enacted as Chapter 254 of the Laws of 1983 and codified as RSA 211:49-b, and H.B. 255, enacted as Chapter 81 of the Laws of 1983 and codified as RSA 211:49-a. Your specific inquiries are (1) whether under these bills a commercial fishing license is required for the taking of all marine species, and (2) whether such a license is required for persons taking fish by angling. Our answer to each question is yes, providing that the fish are taken for the purpose of selling the same.

Chapter 254, §1 of the Laws of 1983 established the requirement for a resident commercial fishing license. It reads in pertinent part as follows:

Any resident of this state who takes, possesses, lands, or transports on the waters of this state any marine species excluding lobsters, by any method, for the purpose of selling the same, regardless of where the catch was taken, shall first procure a valid license from the executive director to do so (emphasis added).



Major Mason Butterfield
August 29, 1983
Page 2

H.B. 255, enacted as Chapter 81 of the Laws of 1983, established the requirement for a non-resident commercial fishing license. It requires that non-resident commercial fishermen who take "any marine species by any method" must also obtain a license.

In responding to your inquiry, I am guided by the rule of statutory interpretation that "the intention of the legislature as expressed in the statute is the touchstone of its meaning". Ahearn v. Laconia Country Club, 118 N.H. 623, 624 (1978). As expressed in a slightly different fashion by the New Hampshire Supreme Court a year later, "the legislative intent is to be found, not in what the legislature may have intended, but rather in the meaning of what it did say". Corson v. Brown Products, Inc., 119 N.H. 20, 23 (1979).

Viewing H.B. 254 and H.B. 255 in this light, there is little doubt as to the meaning of the bills as written. A resident commercial fishing license is required for any person who takes "any marine species", "by any method". The scope of the license requirement is not limited to any particular species. Our answer to your first question, therefore, is that a commercial license must be obtained by persons taking any marine species.

That Section 2 of Chapter 254 defines "commercial fisherman" to include only those persons taking groundfish does not change our conclusion. That provision defines the term "commercial fisherman" as follows:

Any person who holds a valid federal
fisheries permit issued pursuant to 50 Code
of Federal Regulations, section 651.4.

Under the referenced provision of the Code of Federal Regulations, only groundfish (haddock, flounder, and cod) fishermen need to hold a federal fisheries permit.

This new definition is codified as RSA 207:1 (IV-a), the general definition section for the Fish and Game Title of the Revised Statutes Annotated. This definition, therefore, applies only where that term is used in the Title. See, e.g. RSA 211:49 (II), as amended by Chapter 219 of the Laws of 1983. Because the term appears nowhere in Chapter 254 or Chapter 81 (RSA 211:47(a) or (b)), this definition does not affect the provisions of those two chapters. Therefore, the new commercial fishing license, resident and nonresident, will be required for persons taking any marine species (excluding lobster), and is not limited to those persons taking only groundfish.

Major Mason Butterfield
August 29, 1983
Page 3

With regard to your second question, the statutory language is also clear that persons taking fish by angling must obtain a license. Chapters 254 and 81 refer specifically to the taking of fish "by any method". There is no indication in either chapter that taking fish by angling is outside the purview of the license requirement. Please note, however, that the license in question is a "commercial" license, intended only for those persons who take fish "for the purpose of selling the same". Chapter 254, §1, Chapter 81, §1.

Although it is unnecessary, and would be improper in our view, to look beyond the plain meaning of these statutes, the limited legislative history available is instructive on this point. In comments to the Senate Development, Recreation and Environment Committee on April 28, 1983, Mr. Charles Thoits of your Department remarked generally that one purpose of H.B. 254 was to begin to learn the approximate numbers of commercial fishermen on the New Hampshire seacoast. The following exchange between Senator Johnson and Mr. Thoits is illuminating:

Senator Johnson: ...It sounded to me like if I
went out on some boat that I would fall
under this.

Charles Thoits: If you owned a 16-ft. boat and
went out and caught 200 lbs. of some certain
fish and you bring them home and sell them
on the market, you would need a resident
commercial license. There are a lot of
small time fisherman that are doing that.

From this it appears that the relevant inquiry is whether a fisherman intends to sell his fish; not how he takes them.

In sum, Chapters 254 and 81 of the Laws of 1983 require that persons (resident and nonresident alike) taking any marine species by any method, including angling, for the purposes of selling the same, must obtain a commercial fishing license.

On a related matter, you submitted to me by memorandum dated August 2, 1983, draft copies of resident and nonresident commercial fishing licenses and applications. To the extent that these forms do not limit the license requirement to certain methods of fishing or to any certain species of fish, it is consistent with our interpretation of Chapters 254 and 81 of the Laws of 1983.

Major Mason Butterfield
August 29, 1983
Page 4

I would make two additional observations, however. First, you should note that the director may require by rule that resident licensees provide the Department information relating to their fishing activities. Chapter 254, codified as RSA 211:49-b(III).

Second, I note that the applications indicate that licenses are only required for the "owner...of the boat, vessel, or gear." As to nonresidents, this limitation should properly read that the license is required for the "operator of the boat, vessel or gear, and helpers up to 3 in number". This will then be consistent with Chapter 81 of the Laws of 1983, codified as RSA 211:49-a(II).

A similar provision in the resident license and license application, stating that a resident license is for the owner of the boat, vessel, or gear, is not consistent with the new law. In contrast to Chapter 81 which specifically references the persons for whom the license requirement is required, Chapter 254 is silent on this issue. On its face Chapter 254 requires "any resident" who fishes commercially to obtain a license. Other sections of this chapter refer to "any person so licensed". Chapter 254:1, codified as RSA 211:49-b (III, V) (emphasis added).

Where there is no limitation included in Chapter 254, the general definitions of the terms "resident" and "person" in RSA 207:1 dictate their meaning. "Resident" is defined as a U.S. citizen who has made his domicile in the State for a certain period of time. RSA 207:1, (XXIII). "Person" includes "co-partnership, association and corporation, and also principal, agent, or employee". RSA 207:1 (XX). Thus, in contrast to Chapter 81 as to nonresident licenses, Chapter 254 requires that any resident who takes fish commercially, not only the operator of the vessel or equipment, must obtain a commercial fishing license. The reference to "owner" in the license and application forms should, therefore, be expanded accordingly.

Please let me know if you have any further questions or comments on this matter.

Yours truly,

Robert P. Clancy Jr., Asst. AG
For George Dana Bisbee
Assistant Attorney General
Environmental Protection Division

GDB/mlw

83-95-I